Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	§	
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BellSouth's Petition for Declaratory Ruling Regarding the Commission's Definition of Interconnected VoIP in 47 C.F.R. § 9.3 and the Prohibition on State Imposition of 911 Charges on VoIP Customers in 47 U.S.C. § 615a-1(f)(1)	§	WC Docket No. 19-44
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COMMENTS OF THE TEXAS 9-1-1 ENTITIES TO THE PETITIONS FOR DECLARATORY RULING

The Texas 9-1-1 Alliance,[1] the Texas Commission on State Emergency Communications ("CSEC"),[2] and the Municipal Emergency Communication Districts Association[3] (collectively, the "Texas 9-1-1 Entities") respectfully submit these comments on the petitions for declaratory rulings filed by BellSouth and Alabama 911 Districts.[4] The Texas 9-1-1 Entities urge the Commission to make clear that granting any aspects of either petition should not call into question long-standing state statutes and regulations for traditional Time Division Multiplexing ("TDM") services,[5] which are reasonable, technologically sound, and consistent with the Commission's

[1] The Texas 9-1-1 Alliance is an interlocal cooperation entity composed of 27 Texas emergency communication districts with E9-1-1 service and related public safety responsibility for more than 70% of the population of Texas. These emergency communication districts were created pursuant to Texas Health and Safety Code Chapter 772 and are defined under Texas Health and Safety Code Section 771.001(3)(B).

[2] The Texas Commission on State Emergency Communications ("CSEC") is a state agency created pursuant to Texas Health and Safety Code Chapter 771, and by statute is the state's authority on emergency communications. CSEC's membership includes representatives of the Texas 9-1-1 Entities and the general public, and CSEC directly oversees and administers the Texas state 9-1-1 program under which 9-1-1 service is provided in 192 of Texas' 254 counties, covering at least 55% of the state's geography and 18.5% of the state's population.

[3] The Municipal Emergency Communication Districts Association ("MECDA") is an association of 26 municipal emergency communication districts, as defined under Texas Health and Safety Code Section 771.001(3)(A), that are located primarily in the Dallas-Fort Worth area.

[4] *See Pleading Cycle established for Comments on Petitions for Declaratory Ruling filed by BellSouth and Alabama 911 Districts*, WC Docket No. 19-44 (rel. Feb. 26, 2019) (av*ailable at https://ecfsapi.fcc.gov/file/0226260801445/DA-19-125A1.pdf*).

[5] *Charter Advanced Servs. (MN), LLC v. Lange*, No. 17-2290, 2018 WL 4260322 (8th Cir. Sept. 7, 2018) ("*Charter*") at 3 ("Traditional telephone networks (collectively known as the public switched telephone network or "PSTN") utilize "circuit switching" technology, which establishes a dedicated pathway for the duration of a call. A technique called

9-1-1 public safety and public interest objectives. This is especially true in the context of validation of dispatchable location information from fixed business TDM services or where the scope of state regulations is beyond the reach of the recent *Charter* decision.

Both BellSouth and the Alabama 911 Districts recognize that a determination of Commission preemption under 47 U.S.C. § 615a-1(f)(1) and the requested declaratory rulings regarding the meaning of Interconnected VoIP in 47 C.F.R. § 9.3 could have far-reaching implications beyond the parties' particular disputed matters,[6] which appear to relate to certain business TDM services.[7] As explained more herein, the far-reaching implications of any such finding make the Commission's determination of critical importance, and make any potential changes regarding the proper interpretation of Interconnected VoIP under 47 C.F.R. § 9.3 perhaps more appropriate for a 9-1-1 rulemaking proceeding.

BellSouth requests that "[t]he Commission should declare that § 615a-1(f)(1) preempts any state statute that requires interconnected VoIP customers to pay a higher total amount in 911

Time Division Multiplexing ("TDM") allows multiple circuit-switched calls to share the same line.") (*available at* https://ecf.ca8.uscourts.gov/opndir/18/09/172290P.pdf).

[6] *See BellSouth's Petition for Declaratory Ruling Regarding the Commission's Definition of Interconnected VoIP in 47 C.F.R. § 9.3 and the Prohibition on State Imposition of 911 Charges on VoIP Customers in 47 U.S.C. § 615a1(f)(1)*, BellSouth Communications, LLC's Petition for Declaratory Ruling (filed Jan. 7, 2019) (hereinafter "BellSouth's Petition") at p. 22 ("Finally, the Districts' proposed expansion of the Commission's definition of interconnected VoIP is especially problematic because that definition is also used in multiple federal statutes, numerous other Commission rules, and many state statutes." [footnotes in original omitted]) (*available at* https://ecfsapi.fcc.gov/file/101072435425233/2019%2001%2007%20BellSouth%20Petition%20for%20Declaratory%20Ruling.pdf. *See also Petition for Declaratory Ruling in Response to Primary Jurisdiction Referral, Autauga County Emergency Management Communication District et al. v. BellSouth Telecommunications, LLC, No. 2:15-cv-00765-SGC (N.D. Ala.)*, Petition of the 911 Districts of Autauga County, Calhoun County, Mobile County, and the City of Birmingham Regarding the Meaning and Application of the Definition of Interconnected VoIP Service Set Forth in 47 C.F.R. § 9.3 (filed Jan. 29, 2019) (hereinafter "Alabama 911 Districts' Petition") at p. 8 ("The court also concluded that there was "a need for uniformity regarding classification of VoIP services" because "numerous federal and state laws as well as FCC rules regarding VoIP would be implicated if the Districts' contentions are correct.") (*available at* https://ecfsapi.fcc.gov/file/10129291825909/Ala.%20911%20Districts'%20FCC%20Petition%201.29.19.pdf).

[7] *See* Alabama 911 Districts' Petition at p. 6 ("BellSouth maintains further that it offered no business VoIP products during the relevant time period; rather, it offered to business customers only TDM and other traditional telephone services, including ISDN PRI.").

charges than customers purchasing the same quantity of non-VoIP telephone service."[8] Assuming *arguendo* that Commission preemption is an available option, the Commission's exercise of such authority would not be appropriate in this context because such exact comparisons of each business customer's bill are not reasonable due to the inherent differences between channelized (e.g., traditional TDM dedicated pathway circuit-switched network) voice services and unchannelized voices services.

For example, the Commission's Form 477 recognizes that the number of lines related to unchannelized business voice services are able to be reliably estimated in some manner.[9] This "reliable estimation" approach is precisely what CSEC Rule 255.4 seeks to do specifically in Texas for purposes of uniformly applying 9-1-1 fees for unchannelized business voice services.[10] As such, it would not be factually or technologically appropriate for the Commission to consider preemption in this context or consider infringing upon state authority over 9-1-1 fees under 47

[8] BellSouth's Petition at p. 24.

[9] Form 477 ("Local exchange telephone service uses Time Division Multiplexing (TDM) format to transmit voice calls between the end-user customer's ordinary wired or cordless telephone and the telecommunications network—and within-network conversion of voice calls into IP packet format for transport ("IP-in-the-middle") is not relevant. Note that a single end-user customer service cannot be both local exchange telephone service and interconnected VoIP service." … "When the end-user customer has bought channelized service, report VGEs of the activated, charged-for channels and do not report the theoretical capacity of the underlying circuit. Examples: Count Basic Rate Integrated (BRI) Services Digital Network (ISDN) lines as two voice-grade equivalent lines. Count fully-channelized PRI circuits (including PRIs that are used exclusively to provide local connectivity to dial-up ISPs) as 23 voice-grade equivalent lines. But report, for example, 8 voice-grade equivalent lines if a customer is charged for 8 trunks that happen to be provisioned over a DS1 circuit. If a customer is charged for a fully-channelized DS1 circuit, however, report 24 voice-grade equivalent lines." … "Count the maximum number of interconnected VoIP calls that the end-user customer may have active—at the same time (that is, simultaneously)—between the customer's physical location and the public switched telephone network. The maximum number of such calls may be set out under the terms of service agreements with business, institutional, or government customers, or it may be determined by some other method that best reflects customer needs and requirements. For example, providers that market against traditional business telephone systems should be able reliably to estimate what their customer's requirements would be for trunks between traditional PBX and the telephone company. In the Explanation and Comments section of the form, filers must describe the method used to determine the maximum number of simultaneous interconnected VoIP calls.") (*available at* https://transition.fcc.gov/form477/FVS/definitions_fvs.pdf).

[10] *See* 1 Tex. Admin. Code §255.4(c) (TAC) (providing that a service provider using one or more facilities with multiple calling capabilities to serve a single end user customer location that cannot determine the actual number of local exchange access lines or equivalent local exchange access lines being served by such facilities (e.g., Enterprise Voice over Internet Protocol applications), shall assess the 9-1-1 emergency service fee in accordance with the table attached to the rule). A copy of CSEC Rule 255.4 is attached to these comments.

U.S.C. § 615a-1(f)(1). This is particularly true where the state rule was developed cooperatively with telecommunications and Interconnected VoIP providers and where the state rule has been in place for years, as is the case with CSEC Rule 255.4.

Regarding the meaning of Interconnected VoIP service in 47 C.F.R § 9.3, the Alabama 911 Districts acknowledge that the Commission used the term "requires" in clause (3) of the definition, instead of the term "permits" as used in clause (4) of the definition, and yet ask that the Commission determine what constitutes "Internet protocol-compatible customer equipment" for purposes of the rule.[11] The requested declaratory ruling by the Alabama 911 Districts does not appear to seek a ruling on whether such was "required" as opposed to being only "permitted," but that appears to be a threshold issue under a plain reading of the language and also under the *Charter* decision.[12] This is concerning from both a public safety and public interest perspective because, unlike state regulations that provide for caller location validation for traditional TDM services, the Commission's Interconnected VoIP Rule only requires mere "registered location."[13] Prior to the Commission interpreting "required" to mean "permitted" and arguably expanding the scope of

[11] Alabama 911 Districts' Petition at p. 15 ("The Commission defines IVoIP as any service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) ***requires Internet protocol-compatible customer premises equipment (CPE)***; and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network. Here, the parties' dispute centers on the third element—whether particular equipment constitutes Internet protocol-compatible customer premises equipment ("IP CPE"). The Commission should interpret the third component of this test—the requirement for IP CPE—to encompass all equipment that transmits, processes, or receives IP packets located on or within the customer's or building owner's premises." [footnotes in original omitted]).

[12] *See Charter* at 8 ("Spectrum Voice's service is not aimed at providing backwards compatibility for existing CPE. Instead, Spectrum Voice's customers **must** receive new CPE (the eMTA) to utilize its services.") (emphasis added).

[13] *See* Texas 9-1-1 Entities Initial Comments in *In the Matter of Implementing Kari's Law and Section 506 of RAY BAUM'S ACT and Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems*, PS Docket Nos. 18-261 and 17-239, at p. 5 (filed Dec. 10, 2018, and *available at* https://ecfsapi.fcc.gov/file/1210263838702/Initial%20Comments%20of%20the%20Texas%209-1-1%20Entities%20in%20PS%20Docket%20Nos.%2018-261%20and%2017-239%20-%2012.10.18pdf.pdf) ("While consistency alone warrants that the definition of "dispatchable location" be the same across the Commission's 9-1-1 rules regardless of technological platform (e.g., CMRS, fixed telephone/legacy landline, MLTS), this is particularly important as technological platforms morph and evolve (e.g., fixed wireless, mobile VoIP, Wi-Fi calling) and no longer fit neatly into traditionally defined and differentiated categories. Validation and corroboration are particularly necessary in an IP environment. It must become the rarest of circumstances where a 9-1-1 call that should have been routed to a PSAP in Minnesota is instead routed to a PSAP in Texas.") [footnotes in original omitted]).

preemption of state 9-1-1 service requirements, it should require, at a minimum, more than mere "registered location" for Interconnected VoIP. To do otherwise would eliminate the requirement to provide validated dispatchable location in the context of traditional TDM services under state regulations, and that should not be an outcome of this declaratory ruling proceeding.[14]

The Texas 9-1-1 Entities appreciate the opportunity to provide the foregoing comments on the petitions for declaratory ruling, and respectfully urge the Commission to make clear that any ruling on either petition should not call into question existing state statutes and regulations for traditional TDM services.

[14] *Cf.*, 16 Tex. Admin. Code § 26.433(f) (TAC) ("**Database integrity.** In order to ensure the consistent quality of database information required for fixed-location 9-1-1 services, the following standards apply. (1) A CTU operating in the state of Texas shall: (A) Utilize a copy of the 9-1-1 administrative entity's MSAG or other appropriate governmental source, such as post offices and local governments, to confirm that valid addresses are available for 9-1-1 calls for areas where the 9-1-1 service includes selective routing, or automatic location identification, or both, in order to confirm that valid addresses are available for 9-1-1 calls. This requirement is applicable where the 9-1-1 administrative entity has submitted an MSAG for the service area to the designated 9-1-1 database management services provider. …" (*available at* http://www.puc.texas.gov/agency/rulesnlaws/subrules/telecom/26.433/26.433.pdf).

Respectfully submitted,

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Attachment: CSEC Rule 255.4 with Attached Graphic

Texas Administrative Code

TITLE 1	ADMINISTRATION
PART 12	COMMISSION ON STATE EMERGENCY COMMUNICATIONS
CHAPTER 255	FINANCE
RULE §255.4	Definition of a Local Exchange Access Line or an Equivalent Local Exchange Access Line

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(a) The terms "local exchange access line" or "equivalent local exchange access line" mean the physical voice grade telecommunications connection or the cable or broadband transport facilities, or any combination of these facilities, owned, controlled, or relied upon by a service provider, between an end user customer's premises and a service provider's network that, when the digits 9-1-1 are dialed, provides the end user customer access to a public safety answering point through a permissible interconnection to the dedicated 9-1-1 network. In the case of multi-channel services or offerings, channelized by a service provider, each individual channel provided to an end user customer shall constitute a separate "local exchange access line" or "equivalent local exchange access line" (e.g., ISDN-PRI service consists of 24 individual channels.) The terms "local exchange access line" or "equivalent local exchange access line" include lines as defined above that a service provider offers at a fully or partially discounted rate from the provider's base rate to a class of end users (e.g., the service provider's employees/retirees). Such discounting is not a basis for eliminating or reducing the 9-1-1 emergency service fee on such lines, except in the instance of an Emergency Communication District imposing its 9-1-1 emergency service fee based on a percentage in lieu of a flat rate.

(b) The terms "local exchange access line" or "equivalent local exchange access line" do not include coin-operated public telephone equipment, public telephone equipment operated by card reader, commercial mobile radio service that provides access to a paging or other one-way signaling service, a communication channel suitable only for data transmission, a line from a telecommunications service provider to an Internet service provider for the Internet service provider's data modem lines used only to provide its Internet access service and that are not capable of transmitting voice messages, a wireless roaming service or other nonvocal commercial mobile radio service, a private telecommunications system, or a wireless telecommunications connection subject to Texas Health and Safety Code §771.0711.

(c) A service provider using one or more facilities with multiple calling capabilities to serve a single end user customer location that cannot determine the actual number of local exchange access lines or equivalent local exchange access lines being served by such facilities (e.g., Enterprise Voice over Internet Protocol applications), shall assess the 9-1-1 emergency service fee as follows:

Attached Graphic

Source Note: The provisions of this §255.4 adopted to be effective July 11, 1988, 13 TexReg 3291; amended to be effective December 13, 1995, 20 TexReg 10187; amended to be effective June 8, 1999, 24 TexReg 4226; amended to be effective November 21, 1999, 24 TexReg 10045; amended to be effective February 13, 2005, 30 TexReg 543; amended to be effective October 16, 2006, 31 TexReg 8508; amended to be effective October 11, 2007, 32 TexReg 7037

Figure: 1 TAC §255.4(c)

Where the number of 9-1-1 capable telephone numbers (TNs) is:	The Midpoint (MP) is:	The applicable formula is: [(MP-10)/4]+10	Number of Fees to be Remitted
1-10			# of TNs
11-20	15	11	11
21-40	30	15	15
41-60	50	20	20
61-80	70	25	25
81-100	90	30	30
		The applicable formula is: [(MP-10)/3]+10	
101-125	113	44	44
126-150	138	53	53
151-175	163	61	61
176-200	188	69	69
201-250	225	82	82
251-300	275	98	98
301-400	350	123	123
401-500	450	157	157
501-600	550	190	190
601-700	650	223	223
701-800	750	257	257
801-900	850	290	290
901-1000	950	323	323